

These Conditions may only be varied with the written agreement of the Purchaser. No terms or conditions put forward at any time by the Supplier shall form any part of the Contract unless specifically agreed to in writing by the Purchaser.

1. DEFINITIONS

In these Conditions:

'Purchaser' means Dundee City Council, 21 City Square, Dundee, DD1 3BY;

'Supplier' means the person, firm or company to whom the Contract is issued;

'Services' means the services to be provided as specified in the Specification of Requirements and shall, where the context so admits, include any materials, articles and goods to be supplied there under;

'Premises' means the location where the services are to be performed, as specified in the Specification of Requirements;

"Data Controller", "Data Processor", "Data Subject" and "Data Subject Access Request" have the meanings given in the Data Protection Laws;

"Data Protection Laws" means any law, statute, subordinate legislation regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 1998 and any statutory modification or re-enactment thereof and the GDPR;

"GDPR" means General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

"Personal Data" has the meaning given in the Data Protection Laws;

"Processing" has the meaning given in the Data Protection Laws and cognate expressions shall be construed accordingly;

"Supervising Authority" has meaning given in Data Protection Laws.

'Contract' means the contract between the Purchaser and the Supplier consisting of the Specification of Requirements, these Conditions and other documents (or parts thereof) specified in the Specification of Requirements;

'Specification of Requirements' means the document setting out the Purchaser's requirements for the Contract. Where the Contract proceeds on the basis of an invitation to tender issued by the Purchaser this phrase means the invitation to tender and any document incorporated therein by reference as forming or comprising the Contract between the Purchaser and the Supplier. Where the contract between the Purchaser and the Supplier proceeds only on a purchase order and acceptance of that order, this means the purchase order by which the Purchaser orders the Services from the Supplier.

2. CHANGE TO CONTRACT REQUIREMENTS

- 2.1 Subject to the same constituting a permitted variation in terms one of the first eight paragraphs of the Regulation referred to in Condition 17.3(a), either party may propose any variation to any part of the Services that for any other reason shall in its opinion be desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions to the Services and changes in quality, form, character, kind, timing, method or sequence of the Services. Variations are to be agreed between the Supplier and the Purchaser and until an agreement is reached the contract will continue as previously agreed.

- 2.2 Save as otherwise provided herein, no variation of the Services as provided for in Condition 2.1 hereof shall be valid unless given or confirmed in the form of an order given by the Purchaser. All such orders shall be given in writing provided that if for any reason the Purchaser shall find it necessary to give any such order orally in the first instance the Supplier shall comply with such oral order which must be confirmed in writing by the Purchaser within 2 working days of the giving of such oral order by the Purchaser, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 working day period.
- 2.3 Where any such variation of the Services made in accordance with Condition 2.1 and 2.2 has affected or may affect the costs incurred by the Supplier in providing the Services, the Supplier will notify the Purchaser in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Purchaser, who shall take all of the facts into account (including such information as may be provided by the Supplier in respect of the effect which such variation has had or may have on the costs incurred by the Supplier in providing the service) and may authorise such alteration to the sums to be paid to the Supplier in accordance with the provisions of the Contract as are, in the Purchaser's opinion, appropriate and reasonable in the circumstances.

3. INSPECTION OF PREMISES AND NATURE OF SERVICES

- 3.1 The Supplier is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of the Services to be carried out and is deemed to be satisfied in relation to all matters connected with the Services and Premises.
- 3.2 The Purchaser shall, at the request of the Supplier, grant such access as may be reasonable for this purpose.

4. SUPPLIER'S STATUS

In carrying out the Services the Supplier shall be acting as principal and not as the agent of the Purchaser. Accordingly:

- (a) the Supplier shall not (and shall procure that the Supplier's agents and servants do not) say or do anything that might lead any other person to believe that the Supplier is acting as the agent of the Purchaser; and
- (b) nothing in this Contract shall impose any liability on the Purchaser in respect of any liability incurred by the Supplier to any other person but this shall not be taken to exclude or limit any liability of the Purchaser to the Supplier that may arise by virtue of either a breach of this Contract or any negligence on the part of the Purchaser, or the Purchaser's staff or agents.

5. SUPPLIER'S PERSONNEL

- 5.1 The Supplier shall take the steps reasonably required by the Purchaser to prevent unauthorised persons being admitted to the Premises. If the Purchaser gives the Supplier notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Supplier shall take all reasonable steps to comply with such notice and if required by the Purchaser the Supplier shall replace any person removed under this Condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered.
- 5.2 If and when instructed by the Purchaser, the Supplier shall give to the Purchaser a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Purchaser may reasonably require.
- 5.3 The decision of the Purchaser shall be final and conclusive as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Supplier has furnished the information or taken the steps required of the Supplier by this Condition.
- 5.4 The Supplier shall bear the cost of any notice, instruction or decision of the Purchaser under this Condition.

6. MANNER OF CARRYING OUT THE SERVICES

- 6.1 The Supplier shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the Purchaser's prior consent.
- 6.2 Access to the Premises shall not be exclusive to the Supplier but only such as shall enable the Supplier to carry out the Services concurrently with the execution of work by others. The Supplier shall co-operate with such others as the Purchaser may reasonably require.
- 6.3 The Purchaser shall have the power at any time during the progress of the Services to order in writing:
 - (a) The removal from the Premises of any materials which in the opinion of the Purchaser are either hazardous, noxious or not in accordance with the Contract, and/or
 - (b) The substitution of proper and suitable materials, and/or
 - (c) The removal and proper re-execution notwithstanding any previous test thereof or interim payment therefore of any work which, in respect of material or workmanship is not in the opinion of the Purchaser in accordance with the Contract.
- 6.4 The Supplier shall forthwith comply with any order made under Condition 6.3.
- 6.5 On completion of the Services the Supplier shall remove the Supplier's plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition.

7 HEALTH AND SAFETY

The Supplier shall perform the Services in such a manner as to be safe and without risk to the health or safety of persons in the vicinity of the place where the Services are being performed (whether such persons are in the vicinity of the said place at the time when the Services are being performed or otherwise) and in such a manner as to comply with any relevant health and safety or other legislation (including Statutory Instrument, Orders, or Regulations made under the said legislation) and any requirements imposed by a local or other regulatory authority in connection with the performance of services of the type supplied to the Purchaser, whether specifically or generally. The Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition. This indemnity shall be limited to the minimum insurance value specified at 14.3b below.

8. TIME OF PERFORMANCE

The Supplier shall begin performing the Services on the date stated in the Specification of Requirements and shall complete the Services by the date stated in the Specification of Requirements or continue to perform them for the period stated in the Specification of Requirements (whichever is applicable). Time is of the essence of the Contract. The Purchaser may by written notice require the Supplier to execute the Services in such order as the Purchaser may decide. In the absence of such notice the Supplier shall submit such detailed programmes of work and progress reports as the Purchaser may from time to time require. The Purchaser shall act reasonably in implementing its powers under this Condition and shall take cognisance of representations by the Supplier.

9. PAYMENT

- 9.1 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Purchaser.
- 9.2 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 9.3 Notwithstanding Condition 19 of this Contract the Supplier may assign to another person (an "assignee") the right to receive payment of the Price or any part thereof due to the Supplier under this Contract subject to (i) deduction of sums in respect of which the Purchaser exercises the right of recovery under Condition 18 of this Contract and (ii) all the related rights of the Purchaser under this Contract in relation to the recovery of sums due but unpaid. The Supplier shall notify or procure that any assignee notifies the Purchaser of any variations to the arrangements for payment of the Price or for handling invoices, in each case in good time to enable the Purchaser to redirect

payments or invoices accordingly. In the absence of such notification the Purchaser shall be under no obligation to vary the arrangements for payment of the Price or for handling invoices.

10. FREE-ISSUE MATERIALS

Where the Purchaser for the purpose of the Contract issues materials free of charge to the Supplier such materials shall be and remain the property of the Purchaser. The Supplier shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Supplier shall notify the Purchaser of any surplus materials remaining after completion of the Services and shall dispose of them as the Purchaser may direct. Waste of such materials arising from bad workmanship or negligence of the Supplier or any of the Supplier's servants, agents or sub-Contractors shall be made good at the Supplier's expense. Without prejudice to any other of the rights of the Purchaser, the Supplier shall deliver up such materials whether processed or not to the Purchaser on demand.

11. AUDIT

The Supplier shall keep and maintain until 2 years after the Contract has been completed records to the satisfaction of the Purchaser of all expenditures which are reimbursable by the Purchaser and of the hours worked and costs incurred in connection with any employees of the Supplier paid for by the Purchaser on a time charge basis. The Supplier shall on request afford the Purchaser or the Purchaser's representatives such access to those records as may be required by the Purchaser in connection with the Contract. The Purchaser shall treat any data provided under this Condition as confidential data of the Supplier and shall not supply it to any third party except where under a legal obligation to do so.

12. CORRUPT GIFTS OR PAYMENTS

The Supplier shall not offer or give, or agree to give, to any employee or representative of the Purchaser any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with the Purchaser or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract. The attention of the Supplier is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916 and the Bribery Act 2010.

13. PATENTS, Information AND COPYRIGHT

13.1 It shall be a condition of the Contract that, except to the extent that the Services incorporate designs furnished by the Purchaser, that nothing done by the Supplier in the performance of the Services shall infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party and the Supplier shall indemnify the Purchaser against all actions, claims, demands, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition. The Purchaser agrees to provide prompt notice of such claims and allow the Supplier to assume responsibility for any legal proceedings and negotiations.

13.2 All rights (including ownership and copyright) in any reports, documents, specifications, instructions, plans, drawings, patents, models or designs whether in writing or on magnetic or other media:

(a) furnished to or made available to the Supplier by the Purchaser shall remain vested in the Purchaser absolutely.

(b) prepared by or for the Supplier for use, or intended use, in relation to the performance of this Contract are hereby assigned to and shall vest in the Purchaser absolutely, and (without prejudice to Condition 16.2) the Supplier shall not and shall procure that the Supplier's servants and agents shall not (except to the extent necessary for the implementation of this Contract) without the prior written consent of the Purchaser use or disclose any such reports, documents, specifications, instructions, plans, drawings, patents, models, designs or other material as aforesaid or any other information (whether or not relevant to this Contract) which the Supplier may obtain pursuant to or by reason of this Contract, except information which is in the public domain otherwise than by reason of a breach of this provision, and in particular (but without prejudice to the generality of the foregoing) the Supplier shall not refer to the Purchaser or the contract in any advertisement without the Purchaser's prior written consent.

13.3 The provisions of this Condition 13 shall apply during the continuance of this Contract and after its termination howsoever arising.

14. INDEMNITY AND INSURANCE

14.1 Without prejudice to any rights or remedies of the Purchaser the Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any negligent or wrongful act or omission of the Supplier. This indemnity shall be limited to the minimum insurance value specified at 14.3b below

14.2 The indemnity contained in Condition 14.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of the Purchaser or any servant or agent of the Purchaser.

14.3 The Supplier shall have in force and shall require any sub-contractor to have in force:

- (a) **Employer's Liability Insurance** covering the death of or bodily injuries to employees of the bidder arising out of and in the course of their employment in connection with this contract to the level of 10,000,000 GBP in respect of each claim, and
- (b) **Public Liability Insurance** covering the death of or bodily injury to a person (not an employee of the bidder) or loss of or damage to property resulting from an action or failure to take action by the bidder to the level of 5,000,000 GBP in respect of each claim, and
- (c) **Professional Indemnity Insurance/Medical Malpractice Insurance** covering the failure of the bidder to use the skill and care normally used by professionals providing the services described in this tender to the level of £2,000,000 GBP in respect of each claim, and
- (d) **Product Liability Insurance** covering the death of or bodily injury to a person (not an employee of the bidder) or loss of or damage to property resulting from an action or failure to take action by the bidder to the level of 5,000,000 GBP in respect of each claim, and
- (e) Vehicle Insurance (provider motor vehicles). Provider responsible for ensuring that motor insurance of staff or volunteers who use their own vehicles have business use insurance covered. If carrying service users includes, business use and personal accident cover for passengers.

14.4 The policy or policies of insurance referred to in Condition 14.3 shall be shown to the Purchaser whenever the Purchaser requests. But in the first instance, satisfactory evidence of a certificate of insurance shall be deemed sufficient.

14.5 The Purchaser shall indemnify the Supplier in respect of all claims, proceedings, actions damages, fines, costs, expenses or other liabilities which may arise out of, or in consequence of, a breach of the Data Protection Laws where the breach is the direct result of the Supplier acting in accordance with the Purchaser's specific written instructions. This indemnity provision shall not apply if the Supplier-

- (a) acts on the Purchaser's specific written instructions but fails to notify the Purchaser in accordance with Condition 16.3.11 of this Contract;
- (b) fails to comply with any obligation under the Contract.

15. DISCRIMINATION

The Supplier shall not unlawfully discriminate against any person within the meaning of the Equality Act 2010 in its activities relating to the Contract or any other contract with the Purchaser. The Supplier shall take all reasonable steps to secure the observance of this Condition by all employees and representatives of the Supplier.

16. DATA PROTECTION, ACCESS TO AND PROVISION OF INFORMATION

16.1 No term of the Contract shall preclude the parties from making public, under the Freedom of Information (Scotland) Act 2002 ("the Act"), and any codes applicable from time to time relating to access to public authorities information, details of any matters relating to the Contract, unless any such details constitute a trade secret; the disclosure of such details would or would be likely to prejudice substantially the commercial interest of any person (including but not limited to the Purchaser or the Supplier or such details fall within such other exemption as may be applicable at the discretion of the Purchaser, in terms of the Act. The Supplier shall facilitate the Purchaser's compliance with the Purchaser's obligations under these provisions and comply with any request from the Purchaser for that purpose. No term of the Contract either shall preclude the Purchaser from sharing pricing and other information under the Contract with other UK public bodies for the purpose of proposed joint procurement of these services along with those bodies in the future and subject to a reciprocal obligation of confidence upon such other public bodies as is imposed on the Purchaser in terms of Condition 16.2(b).

16.2 Subject to Condition 16.1:-

- (a) The Supplier shall keep secret and not disclose and shall procure that its employees keep secret and do not disclose any information of a confidential nature obtained by it in relation to the other party or the other party's clients or business by reason of this Contract except information (i) which is in the public domain otherwise than by reason of a breach of this provision; (ii) obtained from third parties on a non-confidential basis; and
- (b) Commercially sensitive information related to the disclosing party with the receiving party will be treated as commercial in confidence by the receiving party except insofar as required by law, regulatory authority or judicial order to be disclosed.

16.3 Where and insofar as provision of the Services by the Supplier under the Contract does or may involve the Supplier processing personal data on behalf of the Purchaser, the following terms of this Condition 16.3 shall apply during the continuance of this Contract and after its termination, however arising:-

16.3.1. The Supplier acknowledges that any Personal Data described in the scope of the Schedule (Data Protection) will be Processed in connection with the Contract. For the purposes of any such Processing, Parties agree that the Supplier acts as the Data Processor and the Purchaser acts as the Data Controller

Both Parties agree to negotiate in good faith any such amendments to this Contract that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of this Condition 16.3 are without prejudice to any obligations and duties imposed directly on the Supplier under the Data Protection Laws and the Supplier hereby agrees to comply with those obligations and duties.

16.3.2 The Supplier will, in conjunction with the Purchaser and in its own right and in respect of the Contract, make all necessary preparations to ensure it will be compliant with the Data Protection Laws.

16.3.3 The Supplier will provide the Purchaser with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.

16.3.4 The Supplier must:

- 16.3.4.1 process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by the Purchaser (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the European Economic Area unless required to do so by European Union or Member state law or Regulatory Body to which the Supplier is subject; in which case the Supplier must, unless prohibited by that law, inform the Purchaser of that legal requirement before processing the Personal Data only to the extent, and in such manner as is necessary for the performance of the Supplier's obligations under this Contract or as is required by the Law;

- 16.3.4.2 subject to Condition 16.3.4.1 only process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Purchaser's prior written consent;
- 16.3.4.3 take all reasonable steps to ensure the reliability and integrity of any Supplier Representatives who have access to the Personal Data and ensure that the Supplier Representatives:
- (a) are aware of and comply with the Supplier's duties under this Condition;
 - (b) are subject to appropriate confidentiality undertakings with the Supplier or the relevant Sub-contractor;
 - (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Purchaser or as otherwise permitted by this Contract; and
 - (d) have undergone adequate training in the use, care, protection and handling of Personal Data.
- 16.3.5 Implement appropriate technical and organisational measures and in accordance with Article 32 of the GDPR to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.
- 16.3.6 The Supplier shall not engage a sub-contractor to carry out Processing in connection with the Services without prior specific or general written authorisation from the Purchaser. In the case of general written authorisation, the Supplier must inform the Purchaser of any intended changes concerning the addition or replacement of any other sub-contractor and give the Purchaser an opportunity to object to such changes.
- 16.3.7 If the Supplier engages a sub-contractor for carrying out Processing activities on behalf of the Purchaser, the Supplier must ensure that same data protection obligations as set out in this Contract are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Supplier shall remain fully liable to the Purchaser for the performance of the sub-contractor's performance of the obligations.
- 16.3.8 The Supplier must provide to the Purchaser reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the GDPR. The Supplier must notify the Purchaser if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
 - (d) receives any communication from the Supervisory Authority or any other regulatory authority in connection with Personal Data processed under this Contract; or
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulatory order;
- and such notification must take place as soon as is possible but in any event within 3 business days of receipt of the request or any other period as agreed in writing with the Purchaser from time to time.

- 16.3.9 Taking into account the nature of the Processing and the information available, the Supplier must assist the Purchaser in complying with the Purchaser's obligations concerning the security of personal data, reporting requirements for data breaches, data protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the GDPR. These obligations include:
- (a) ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the processing as well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events.
 - (b) notifying a Personal Data breach to the Purchaser without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;
 - (c) assisting the Purchaser with communication of a personal data breach to a Data Subject;
 - (d) supporting the Purchaser with preparation of a data protection impact assessment;
 - (e) supporting the Purchaser with regard to prior consultation of the Supervisory Authority.
- 16.3.10 At the expiry or termination of the Contract the Supplier must, on written instruction of the Purchaser, delete or return to the Purchaser all Personal Data and delete existing copies unless EU or Member State law requires storage of the Personal Data.
- 16.3.11 The Supplier must:
- (a) provide such information as is necessary to enable the Purchaser to satisfy itself of the Supplier's compliance with this Clause 16;
 - (b) allow the Purchaser, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this Clause 16 and contribute as is reasonable to those audits and inspections;
 - (c) inform the Purchaser if, in its opinion, an instruction from the Purchaser infringes any obligation under the Data Protection Laws.
- 16.3.12 The Supplier must maintain written records including in electronic form, of all Processing activities carried out in performance of the Contract or otherwise on behalf of the Purchaser containing the information set out in Article 30(2) of the GDPR.
- 16.3.13 If requested, the Supplier must make such records referred to Clause 16.3.11 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.
- 16.3.14 Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under Condition 16.3.12 with minimum disruption to the Supplier's day to day business.
- 16.3.15 Without prejudice to the terms of **Clause 18**, the Supplier shall indemnify the Purchaser against all losses, costs, expenses, damages, liabilities, demands, claims, actions or proceedings which the Purchaser may incur arising out of any breach of this Clause 16 by the Supplier;
- 16.3.16 In the event of a breach of this Clause 16 by the Supplier, the Supplier shall be bound to remedy the breach within five working days of the breach coming to the attention of the Supplier or the breach being notified to the Supplier by the Purchaser, whichever is earlier. In the event that the breach is not resolved timeously, the Purchaser will be entitled to terminate the Contract forthwith.
- 16.3.17 In this Condition 16, "data" shall mean all information relating to the Purchaser's service users and prospective service users, current and projected financial and trading situations, business plans, business strategies, developments and all other information relating to the Purchaser's business affairs including all information of a confidential nature or imparted by whatever nature by the Purchaser to the Supplier

during the currency of the Contract. All right, title and interest in and to the data shall vest solely in the Purchaser.

16.4 The provisions of this Clause 16 shall apply during the continuance of this Contract and after its termination howsoever arising.

16.5 The Supplier will provide the Purchaser with such management information on delivery of the Services as the Purchaser may reasonably require from time to time, including in particular summary reports on the detail of each item of supply provided within the Services, when and to whom.

SCHEDULE (DATA PROTECTION)

This Schedule includes certain details of the Processing of Personal Data in connection with the Contract:

Subject matter and duration of the Processing of Personal Data

Processing of Personal Data necessary to the supply of Services for duration of the Contract and for the lifetime of the guarantees to be provided in accordance with the Contract.

The nature and purpose of the Processing of Personal Data

The Personal Data to be processed is necessary for the Purchaser to fulfil their statutory obligations in connection with the provision of local authority housing and is necessary in order for the Supplier to fulfil their obligations in providing the Services to the Purchaser.

The type of Personal Data to be processed

- Names
- Addresses
- Professional Qualifications

The categories of Data Subject to whom Personal Data relates

- Purchaser's Tenants
- Supplier's Employees

The obligations and rights of the Purchaser as the Data Controller are set out in Condition 16 of the Contract.

17. TERMINATION

17.1 If either party shall have committed a material breach of this Contract and (if such breach is capable of remedy) the party in breach shall have failed to remedy such breach within 30 days of being required by the other party in writing to do so then that other party shall be entitled to terminate this Contract by notice to the other with immediate effect.

17.2 Without prejudice to any other rights or remedies of the Purchaser under the Contract the Purchaser shall have the right (in relevant and appropriate circumstances as the Purchaser may determine) forthwith to terminate the Contract by written notice to the Supplier or the appropriate trustee in bankruptcy or sequestration, receiver, liquidator, administrator or other representative of the Supplier:

- (a) where the Supplier is an individual and if a petition is presented for the Supplier's bankruptcy or the sequestration of his estate or a criminal bankruptcy order is made against the Supplier, or the Supplier is apparently insolvent, or makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator or trustee is appointed to manage the Supplier's affairs or if the Supplier shall die or be adjudged incapable of managing his or her affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000; or
- (b) where the Supplier is not an individual but is a firm or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of the firm or any

partner in the firm or any of those persons or a petition is presented for the Supplier to be wound up as an unregistered company; or

- (c) where the Supplier is a company, if the company passes a resolution for winding-up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.

17.3 The Purchaser may terminate the Contract in the event that:

- (a) The Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with Regulation 72 (9) (regarding Modification of contracts during their term) of The Public Contracts (Scotland) Regulations 2015;
- (b) The Supplier has, at the time of contract award, been in one of the situations referred to in regulations 58(1) (exclusion grounds) of the Public Contracts (Scotland) Regulations 2015, including as a result of the applications of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure; or
- (c) The Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and the Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty of the Functioning of the European Union.

In this Condition, 'the Treaties' has the meaning given in the European Communities Act 1972.

17.4 The Purchaser may also terminate the Contract in the event of a failure by the Supplier to comply in the performance of the Services with legal obligations in the field of environmental, social and employment law.

17.5 Termination under Conditions 17.1, 17.2, 17.3 or 17.4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Purchaser and shall not affect the continued operation of Conditions 11 (Audit), 13 (Patents, Information and Copyright), 14 (Indemnity and Insurance), 16 (Data Protection, Access to And Provision of Information), and Special Condition of Contract (TUPE).

18. RECOVERY OF SUMS DUE

Wherever under this Contract any sum of money is recoverable from or payable by the Supplier, that sum may be deducted from any sum then due under this Contract, or which at any later time may become due, to the Supplier under this Contract.

19. ASSIGNATION AND SUB-CONTRACTING

19.1 The Supplier shall not assign or sub-contract any portion of the Contract without the prior written consent of the Purchaser. Sub-contracting any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Contract or these Conditions.

19.2 Where the Purchaser has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Supplier to the Purchaser immediately it is issued.

19.3 Where the Supplier enters into a sub-contract the Supplier must ensure that a provision is included in it which:

19.3.1 requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Purchaser has made payment to the Supplier in respect of Services and the sub-contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Supplier is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Supplier, payment must be made to the sub-contractor without deduction;

19.3.2 notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Purchaser and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Purchaser; and

19.3.3 in the same terms as the set out in the condition 19.3 (including for the avoidance of doubt this Condition 19.3.3) subject only to modification to refer to the correct designation of the equivalent party as the Supplier and sub-contractor as the case may be.

19.4 The Supplier shall also include in every sub-contract:

19.4.1 a right for the Supplier to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law or if any of the termination events (involving substantial modification of the Contract, contract award despite the existence of exclusion grounds or a serious infringement of EU legal obligations) specified in Condition 17.3 occur; and

19.4.2 a requirement that the sub-contractor includes a provision having the same effect as 19.4.1 above in any sub-contract which it awards.

In this condition 19.4, 'sub-contract' means a contract between two or more suppliers, at any stage of remoteness from the Purchaser in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

20. BLACKLISTING

The Supplier must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities. Breach of this Condition is a material default which shall entitle the Purchaser to terminate the Contract.

21. DISCLOSURE AND PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007

- 21.1 Where the Contract requires the Supplier, his employees or agents to undertake Regulated Work as defined in Section 91 of the Protection of Vulnerable Groups (Scotland) Act 2007 ("the PVG Act") the Supplier shall ensure that he complies with the provisions of the Protection of Vulnerable Groups (Scotland) Act 2007 ("PVG Act"). The Supplier hereby acknowledges that it is an offence in terms of section 35 of the PVG Act to offer an individual Regulated Work with (i) protected adults and/or (ii) children where the individual is barred from that work.
- 21.2 For the supply of the services which fall outside of the scope of Regulated Work under the PVG Act, the Supplier shall obtain the level of Disclosure which is available directly from Disclosure Scotland and shall confirm to the Council that it has done so. This does not apply to criminal conviction certificates under section 112 of the Police Act 1997 (also known as a basic level check) unless the Council instruct that this is required. The level of Disclosure available shall be determined by reference to Part V of the Police Act 1997 (as amended) and, for the avoidance of doubt, by reference to any regulations made under that Act and guidance issued by Disclosure Scotland (if applicable);
- 21.3 Before an individual is assigned to the delivery of the Services the Supplier shall have used the findings of the Disclosure check as part of the process to make recruitment decisions and such suitable arrangements as are necessary for the safeguarding and protection of the interests of all persons falling within the definition of a child or protected adult as set down in Sections 97 and 94 respectively of the PVG Act. Where the Disclosure check showed that the individual has convictions, reprimands, warnings, cautions or any other relevant information, the Supplier shall have conducted a risk assessment and shall have used that assessment to protect the interests of all persons falling within the said definition of a child or protected adult including without prejudice to the foregoing generality, prohibiting the individual from being involved in the supply of the services to all persons falling within the said definition of a child or protected adult. To ensure compliance with this clause, the Supplier shall have recorded the fact that a risk assessment had been undertaken and shall on request from the Council disclose the record taken of the decision making process to it.
- 21.4 The Supplier shall immediately remove an individual from provision of the Services which involve the undertaking of Regulated Work to either (i) protected adults or (ii) children in the event that the

Supplier or any agency that it is using to recruit individuals is notified by Disclosure Scotland under Section 30 (2) (a) of the PVG Act that the individual is barred from PVG Scheme membership for the type(s) of Regulated Work undertaken.

22. NOTICES

Any notice given under or pursuant to the Contract shall be in writing and may be delivered by hand or by post or by registered post or by the recorded delivery service or transmitted by telex, teletext, facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the Specification of Requirements, or to such other address as the party may by notice to the other have substituted therefore, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

23. DISPUTE RESOLUTION

23.1 The parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract.

23.2 any dispute or difference arising out of or in connection with the Contract, including any questions regarding its existence, validity or termination which cannot be resolved in good faith, shall be determined by the appointment of a single arbitrator to be agreed between the parties, and failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either party. The seat of the arbitration shall be in Scotland. The language used in the arbitral proceedings shall be English.

23.3 Any arbitration under 23.2 is subject to the Arbitration (Scotland) Act 2010

24. HEADINGS

The headings to Conditions shall not affect their interpretation.

25. COMPLIANCE WITH THE LAW ETC.

In providing the Services and otherwise when performing the Contract, the Supplier must comply in all respect with:

25.1 all applicable law

25.2 any applicable requirements of regulatory bodies; and

25.3 Good Industry Practice.

In the condition 'Good Industry Practice' means standards, practices, methods and procedure conforming to legal and regulatory requirements and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking as the Supplier under the same or similar circumstances.

26. GOVERNING LAW

These Conditions shall be governed by and construed in accordance with Scottish law and the Supplier hereby irrevocably submits to the jurisdiction of the Scottish courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Purchaser to take proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

SPECIAL CONDITIONS OF CONTRACT (IF ANY)

A. TUPE

A.1 The Supplier recognises that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply in respect of the contract, and that for the purposes of these Regulations, the undertaking concerned (or any relevant part of the undertaking) shall (a) transfer to

the Supplier on the commencement of the Contract; (b) transfer to another supplier on the expiry of the Contract.

A.2 During the period of six months preceding the expiry of the Contract or after the Purchaser has given notice to terminate the Contract or the Supplier stops trading, and within 20 working days of being so requested by the Purchaser, the Supplier shall fully and accurately disclose to the Purchaser or to any person nominated by the Purchaser information relating to employees engaged in providing the Services in relation to the Contract in particular, but not necessarily restricted to, the following:

- (a) the total number of personnel whose employment with the Supplier is liable to be terminated at the expiry of this Contract but for any operation of law; and
- (b) for each person, age and gender, details of their salary, date of commencement of continuous employment and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of staff do not have to be given); and
- (c) information about the other terms and conditions on which the affected staff are employed, or about where that information can be found; and
- (d) details of pensions entitlements, if any.

A.3 The Supplier shall permit the Purchaser to use the information for the purposes of TUPE and of re-tendering, which shall include such disclosure to potential suppliers as the Purchaser considers appropriate in connection with any re-tendering. The Supplier will co-operate with the re-tendering of the contract by allowing the transferee to communicate with and meet the affected employee and/or their representatives.

A.4 The Supplier agrees to indemnify the Purchaser fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision or disclosure of information permitted under this Clause.

A.5 In the event that the information provided by the Supplier in accordance with this Clause becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Supplier becoming aware that the information originally given was inaccurate, the Supplier shall notify the Purchaser of the inaccuracies and provide the amended information. The Supplier shall be liable for any increase in costs the Purchaser may incur as a result of the inaccurate or late production of data.

A.6 The provisions of the Condition 26 shall apply during the continuance of this Contract and after its termination howsoever arising.

A.7 The provisions of Condition B.1 to B.4 shall apply during the existence of this Contract and after its expiry or termination, however arising.

B. PROVISION OF PUBLIC SERVICES – HUMAN RIGHTS AND EQUALITIES

B.1 Without prejudice to any other terms of the Contract, insofar as under the Contract the Supplier is providing a service of a public nature on behalf of the Purchaser (which the Supplier acknowledges it is doing), the Supplier shall assist compliance with the duties incumbent on the Purchaser under the Human Rights Act 1998 and also the Purchaser's race, gender and disability equalities duties under the Equality Act 2010 and all related, modifying, amending or re-enacting legislation as if the Supplier was the Purchaser for the purposes of performance of the Contract.

SUPPLEMENTARY NOTICE

1. PROTECTING THE ENVIRONMENT

Suppliers to the purchasing authorities are requested to satisfy themselves that no

2. LATE PAYMENT OF INVOICES

Suppliers to the purchasing authorities are requested to address complaints regarding

product will be supplied or used in the Supply of Goods to the Purchaser which will endanger the health of the consumers or others, will cause significant damage to the environment during manufacture, use, or disposal, which consumes a disproportionate amount of energy during manufacture, use, or disposal, which causes unnecessary waste because of over-packaging or because of an unusually short shelf life, or which contains materials derived from threatened species or threatened environments.

late payment of invoices to, in the first instance, the addressee of the invoice and, in the second instance to Dundee City Council orders, the Head of Corporate Finance, Dundee City Council, Floor 4, Dundee House, 50 North Lindsay Street, Dundee, DD1 1NZ; Telephone 01382-433555; e-mail generalfinance@dundeecity.gov.uk This procedure is suggested as the best practical way of ensuring problems of late payment are resolved, and is not intended to interfere with Suppliers' legal rights.

THIS NOTICE DOES NOT FORM PART OF THE CONDITIONS OF CONTRACT

Version: March 2023